

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

HOMEcomings FINANCIAL NETWORK, INC.

Respondent

v.

TIFFANY BROWN AND JAMES MCCRAY

Appellants

DOCKET NUMBER **WD71415**

DATE: June 21, 2011

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Marco Antonio Roldan, Judge

Appellate Judges:

Division One
Victor C. Howard, P.J., Thomas H. Newton, and Alok Ahuja, JJ.

Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

HOMEcomings FINANCIAL NETWORK, INC., Respondent, v.
TIFFANY BROWN AND JAMES MCCRAY, Appellants

WD71415

Jackson County

Before Division One Judges: Howard, P.J., Newton, and Ahuja, JJ.

Homecomings filed a petition for damages against Buyers Brown and McCray for their failure to make mortgage and escrow payments. Homecomings sought to foreclose its lien and alternatively sought equitable relief. Buyers defended the action by alleging that the refinanced mortgage held by Homecomings was fraudulent because they had not signed it. The trial court determined that the mortgage was fraudulent but neither Homecomings nor the Buyers had perpetrated it. It nevertheless found Buyers to be unjustly enriched and granted Homecomings equitable relief by granting its equitable subrogation claim, thereby allowing it to assume the rights of the original lender including the right to foreclose. Buyers appeal.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division One Holds:

Buyers argue that the trial court erred in granting equitable subrogation because: (1) Homecomings failed to show that it had no adequate remedy at law, which is required before equitable subrogation can be granted, and (2) the circumstances did not support applying equitable subrogation. Equitable subrogation is appropriately granted in circumstances bordering on, if not reaching, fraud. Our Missouri Supreme Court refused to grant equitable subrogation to a lender against a homeowner who was not the borrower because the absence of her signature on the loan was not the result of her defrauding or nearly defrauding the lender. Because Buyers were victims of, and not complicit in, the fraud against Homecomings, the trial court erred in granting equitable subrogation.

The trial court also found that Buyers were unjustly enriched by Homecomings paying off the Buyers' original note and making tax and insurance payments on the property. Because Homecomings conferred the benefits due to a mistake, it is entitled to restitution under unjust enrichment. However, Homecomings is only entitled to the amount that would be unjust for the Buyers to keep after the court balances the equities between the parties. Because the court did not consider the equities when it awarded Homecomings damages, we reverse the damages award. Buyers' second point is granted, and the first point, as it concerns the propriety of the grant of equitable subrogation, is rendered moot.

Therefore, we affirm the liability finding under the unjust enrichment claim, reverse the equitable subrogation award and the right to foreclose on the equitable lien, and remand the case for further proceedings consistent with this opinion.

Opinion by Thomas H. Newton, Judge

June 21, 2011

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